

NO. 81473-2

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STATE OF WASHINGTON
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THE SUPREME COURT
STATE OF WASHINGTON

CITY OF BELLEVUE,

Petitioner

v.

SHIN H. LEE, ET AL.,

Respondents.

BRIEF OF PETITIONER

JILL M. THIELE
Assistant City Attorney
Attorney for Petitioner
City of Bellevue
WSBA No. 22581
11511 Main Street
Bellevue, WA 98009-9012

ORIGINAL

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I. ISSUE PRESENTED

- A. Due process requires notice and an opportunity to be heard in a meaningful time and in a meaningful manner. In *City of Redmond v. Moore*, 151 Wash.2d 664 (2004), The Washington State Supreme Court ruled that RCW 46.20.289 was unconstitutional because it failed to provide for any type of administrative review either before or after the suspension of a driver's license. Subsequent to that decision, the Washington State Legislature enacted RCW 46.20.245 which now provides for a pre-suspension hearing. Does the hearing provided for in RCW 46.20.245 satisfy the procedural due process requirements contemplated in *Moore*?

II. STATEMENT OF THE CASE

Each of the Respondents in this case was cited for Driving While License Suspended (3rd Degree) because of a failure to respond, appear, pay, or comply with the terms of a traffic citation pursuant to Revised Code of Washington (RCW) 46.20.289, which states in relevant part that, "A license suspension under this section takes effect pursuant to the provisions of RCW 46.20.245". Prior to the effective date of license suspension, each Respondent was mailed a notice of suspension which contained the following language:

May I appeal this action?

Yes. To request an administrative review return the enclosed form or submit a written request to: Department of Licensing, Hearings & Interviews, PO Box 9031, Olympia, WA 98057-9031 or fax to (360) 664-8492. Requests must be postmarked within 15 days from the date of this notice. If you have questions, please call (360) 902-3878.

Appendix A.

The Respondents challenged this procedure, arguing that it did not comply with due process as required by *City of Redmond v. Moore*, 151 Wash.2d 664, 91 P.3d 875 (2004). The trial court denied the Respondents' due process motion and each Respondent was subsequently found guilty of Driving While License Suspended (3rd Degree). Appendix B.

On appeal to the King County Superior Court, the Honorable Michael J. Fox ruled that RCW 46.20.245, the statute that provides for an administrative review and appeal of an order of license suspension pursuant to RCW 46.20.289, is unconstitutional. Appendix C. This appeal followed.

III. ARGUMENT

The Respondents have been convicted of Driving While License Suspended (3rd Degree). RCW 46.20.342(1)(c). Several years ago that statute was successfully challenged and this Court

held that some type of administrative review at the Department of Licensing (DOL) was required prior to suspending a driver's license to satisfy due process guarantees. *City of Redmond v. Moore*, 151 Wash.2d 664, 91 P.3d 875 (2004). The legislature responded to the *Moore* decision with 2005 Wash. Laws ch. 288, now codified as RCW 46.20.245. In this case, the Respondents argued and the superior court found, that the review procedures outlined in RCW 46.20.245 are insufficient, failing to satisfy constitutional procedural due process requirements.

In *City of Redmond v. Moore*, 151 Wash.2d 664, 91 P.3d 875 (2004) this Court held that RCW 46.20.289 and 46.20.324(1) did not provide adequate procedural safeguards prior to the suspension of a driver's license. Interestingly, the Court noted that Moore and Wilson (in that consolidated case) argued below:

[A hearing in the trial court] does not address ministerial errors that might occur when DOL processes information obtained from the courts pertaining to license suspensions and revocations, e.g. misidentification, payments credited to the wrong account, the failure of the courts to provide updated information when fines are paid. They argue the State would not be unduly burdened if either DOL provided administrative hearings or the legislature amended the statute to authorize courts, rather than DOL, to suspend or revoke a driver's license pursuant to conviction.

Moore, 151 Wash.2d at 674-75.

The legislature responded to the *Moore* decision by promulgating RCW 46.20.245 which states in relevant part:

(2) Within fifteen days after notice has been given to a person under subsection (1) of this section, the person may request in writing an administrative review before the department....If a person fails to request an administrative review within fifteen days after the date the department gives notice, the person is considered to have defaulted and loses his or her right to an administrative review unless the department finds good cause for a request after the fifteen-day period.

(a) An administrative review under this subsection shall consist solely of an internal review of documents and records submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.

(b) The only issues to be addressed in the administrative review are:

(i) Whether the records relied on by the department identify the correct person; and

(ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

RCW 46.20.245.

RCW 46.20.245 provides the very hearing that the defendants argued for in *Moore* and that Respondents argued below is still insufficient to satisfy due process.

Constitutional issues are subject to a de novo review on appeal. *City of Redmond v. Moore*, 151 Wash.2d 664, 91 P.3d 875 (2004). A party that challenges the constitutionality of a statute bears the burden of proving it unconstitutional beyond a reasonable doubt. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wash.2d 622, 631, 71 P.3d 644 (2003). Wherever possible, it is the duty of the court to construe a statute so as to uphold its constitutionality. *State v. Furman*, 122 Wash.2d 440, 458, 858 P.2d 1092 (1993) *citing* *World Wide Video, Inc. v. Tukwila*, 117 Wash.2d 382, 392, 816 P.2d 18, (1991) (*quoting* *State v. Browet, Inc.*, 103 Wash.2d 215, 219, 691 P.2d 571 (1984) *cert. denied*, 503 U.S. 986, 112 S.Ct. 1672, 118 L.Ed.2d 391 (1992)). A facial challenge to a statute must be denied if there are any circumstances where the statute can be constitutionally applied. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wash.2d 245, 282, 4 P.3d 808 (2000); *Tunstall v. Bergeson*, 141 Wash.2d 201, 221, 5 P.3d 69 (2000).

Driver's licenses are a protected property interest. *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971). When a protected property interest is involved, due process requires that there be some kind of a hearing before the property interest is

taken away. *Ong v. Tovey*, 552 F.2d 305, 307 (1977 CA).

However, the type of hearing required is not the same in all cases.

Id. Due process does not always require a full and formal adversary hearing. *Id.* Due process is flexible and calls for only such procedures as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). The purpose of the hearing is a controlling factor in what specific procedures are appropriate. *State v. Scheffel*, 82 Wash.2d 872, 514 P.2d 1052 (1973).

The issue before this Court is what process is due prior to a license suspension under RCW 46.20.289. Resolution of that constitutional issue requires an examination of the governmental and private interests at stake. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Specifically, three factors must be considered: 1) the private interest that will be affected by the official action; 2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and 3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute

procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319 at 334-335, 96 S.Ct. 893, 903.

The first *Mathews* factor requires an identification of the private interest affected by the official action. As this Court noted in *City of Redmond v. Moore*, the private interest in this case is the driver's interest in the continued use and possession of a driver's license. *City of Redmond v. Moore*, 151 Wash.2d 664 at 670. It is undisputed that a driver's license is a protected property interest and that the deprivation of a driver's license can have a significant impact on a person's quality of life and ability to earn a living. However, the weight of the private interest depends on both the nature of the private interest and the duration of the deprivation. *Gilbert v. Homar*, 520 U.S. 924, 932, 117 S.Ct. 1807, 1813, 138 L.Ed.2d 120 (1997). The duration of a license suspension under RCW 46.20.289 lasts only as long as it takes the licensee to resolve the matter with the court issuing the failure to appear.

The second *Mathews* factor requires an examination of the risk of erroneous deprivation of the private interest. Due process does not require that the procedures used to prevent erroneous deprivation be so comprehensive as to preclude any possibility of error. *Mackey v. Montrym*, 443 U.S. 1, 13, 99 S.Ct. 2612, 2618, 61

L.Ed.2d 321 (1979). Rather, “something less than an evidentiary hearing is sufficient prior to adverse administrative action”. *Dixon v. Love*, 431 U.S. 105, 113, 97 S.Ct. 1723, 1728, 52 L.Ed.2d 172 (1977).

Here, the procedures in RCW 46.20.245 ensure that there is a minimal risk of erroneous deprivation of a driver’s license. A person whose license is subject to suspension pursuant to RCW 46.20.289 receives notice that his or her license will be suspended 45 days from the date of the notice. Within fifteen days of the notice, the individual may request an administrative review which stays the suspension. The issues to be addressed in the administrative review are: 1) whether the records relied upon by the DOL identify the correct person; and 2) whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity. Finally, the DOL action is subject to appeal.

The hearing provided for in RCW 46.20.245 protects against the very ministerial errors argued in *Moore* such as misidentification, miscalculation of the fine or errors in the conviction form. The purpose of a hearing conducted pursuant to

RCW 46.20.289 is to determine whether the right person has been identified and whether that person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court or has failed to comply with the terms of a notice of traffic infraction or citation. It is unclear how or what additional or substitute procedural safeguards would better protect against ministerial errors than those procedures already provided for in RCW 46.20.245.

The third *Mathews* factor requires an examination of the fiscal and administrative burden that additional or substitute procedures would have on the government. In other words, “the government’s interest in the efficient and economic administration of its affairs”. *Ongom v. State Department of Health, Office of Professional Standards*, 159 Wash.2d 132,141, 148 P.3d 1029,1033 (2006), quoting *Thompson v. Commonwealth*, 386 Mass. 811, 438 N.E.2d 33 (1982). To require additional or substitute procedures other than those already provided for in RCW 46.20.245 would greatly burden the DOL. Although an individual has a substantial interest in the continued use and possession of a driver’s license, the State likewise has an important interest in the efficient and cost-effective administration of its driver’s license

system, including ensuring that offending drivers appear in court, comply with court orders, and pay properly imposed fines.

To require additional or substitute procedures from those already provided for in RCW 46.20.245 would essentially result in the DOL having to hold an evidentiary hearing anytime an individual contested a suspension under RCW 46.20.289. That, in turn, would result in the need for additional staff to process and conduct the hearings and subpoena witnesses and documents. It is less than clear what benefit an evidentiary hearing would provide in determining whether the right person has been identified and whether that person failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation. Since the risk of erroneous deprivation of a license under RCW 46.20.245 is minimal, the burden on the DOL to provide a more formal hearing outweighs the risk of error and the benefit of providing a more formal hearing.

In *Moore*, this Court did not specify the extent to which a hearing must go to satisfy due process. Rather, the Court stated:

The fatal defect in the statute at bar is that **there is no provision made for any type of administrative hearing**

with notice and an opportunity to be heard before the revocation action becomes effective.

City of Redmond v. Moore, 151 Wash.2d at 672 (emphasis added).

The crux of the *Moore* hearing is the opportunity to be heard prior to suspension of the license to address any ministerial errors such as misidentification. RCW 46.20.245 provides just such an opportunity. Moreover, the legislature included, in addition to the pre-suspension review, post-suspension appeal rights. RCW 46.20.245(2)(e). Therefore, due process is satisfied.

Indeed, this Court evaluated a statutory scheme similar to that at issue in this case and found no due process violations. In *Amunrud v. Board of Appeals and the Dept. of Social and Health Services*, 158 Wash.2d 208, 143 P.3d 571 (2006), Amunrud challenged the suspension of his commercial driver's license for failure to pay child support. The statute at issue in that case was RCW 74.20A.320 which states in relevant part:

A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section....The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative **proceeding are limited to whether:**

(a) The person named as the responsible parent is the responsible parent;

- (b) The responsible parent is required to pay child support under a child support order; and
- (c) The responsible parent is in compliance with the order.

RCW 74.20A.320(3). (emphasis added.)

One of the issues that Amunrud brought before the court was that due process was violated because he was not given a meaningful hearing before suspension. Specifically, he was not permitted to bring before the administrative law judge the reasons that he was not able to pay arrearages in child support that could negate the necessity of his license suspension. *Amunrud v. Board of Appeals and the Dept. of Social and Health Services*, 158 Wash.2d 208 at 217.

The Court rejected Amunrud's claim noting RCW 74.20A.320, unlike the statute at issue in *Moore*, provided an opportunity for an administrative hearing prior to suspension. Further, Amunrud had a right to appeal the license suspension that was not available to the defendant's in *Moore*. *Id.*

In this case, the legislature has crafted a statute, RCW 46.20.245, that is quite similar to the statute upheld in *Amunrud*. In both cases, the legislature has placed limitations on the issues to be heard prior to a driver's license suspension. RCW

46.20.245(2)(b); RCW 74.20A.320(3). Unlike the statute involved in *Moore*, both the statute in *Amunrud* and in this case provide for an appeal from the administrative hearing suspending a license. RCW 46.20.245(2)(e); RCW 74.20A.320(4). In addition, in each case a stay of the suspension is possible if certain actions are taken by the defendant. RCW 46.20.245(2)(e); RCW 74.20A.320(5).

Similarly, in *State v. Scheffel*, 82 Wash.2d 872, 514 P.2d 1052 (1973), this Court rejected the argument that the hearing provided for under the then existing Washington Habitual Traffic Offenders Act violated due process. *Scheffel* was alleged to be an habitual traffic offender based on three separate convictions for driving under the influence of alcohol and was ordered to appear in superior court to show cause why his license should not be revoked as an habitual traffic offender. At that time, RCW 46.65.060 limited the show cause hearing to determining whether or not the person named in the complaint was the same person named in the transcript received from the DOL and whether or not the person was an habitual traffic offender as defined by statute.

This Court found that the purpose of the hearing under RCW 46.65.060 was to determine whether or not the named individual

was an habitual traffic offender as defined by the legislature. As such, the procedure adopted by the legislature for the hearing was designed to ensure that the named individual did in fact accumulate the violations he or she was charged with and did in fact come within the statutory definition of an habitual offender. As a result, the hearing procedures ensured that the named individual's license was not wrongfully revoked and therefore complied with due process. *State v. Sheffel*, 82 Wash.2d at 876.

In *Fuller v. Employment Security Department of Washington*, 52 Wash.App. 603, 604, 762 P.2d 367 (1988) Stephanie Fuller was fired from her job as a Job Service Interviewer with the Employment Security Department and she challenged that action. During an interview with a claims investigator in April 1985 Fuller admitted to falsifying claims during the prior December to March time frame. *Id.* Four days after the initial interview with the investigator Fuller repeated her admission in a meeting with the Department's regional director. At that time she was placed on administrative leave and notified that she had the opportunity to submit additional information regarding her conduct. She submitted none and was subsequently fired. *Id.* at 604-5.

Affirming the termination procedure the court held, that in the public employment context, a pre-termination hearing “need only be an initial check against mistaken decisions to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.” *Fuller*, 52 Wash.App. at 607, *citing Cleveland Bd. of Educ. V. Loudermill*, 470 U.S. 532, 545-46, 105 S.Ct. 1487, 84 L.Ed. 2d 494 (1985).

As the previous cases demonstrate, a full evidentiary hearing is not required in all situations. Rather, the purpose of the hearing along with an examination of the governmental and private interests at stake determine what process is due. Under RCW 46.20.245, the Respondents in this case have been afforded sufficient due process protections and this court should reverse the superior court.

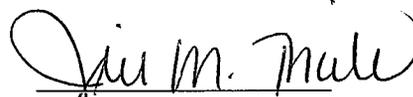
IV. CONCLUSION

The superior court’s ruling that procedures authorized by RCW 46.20.245 for an administrative review fail to provide a meaningful opportunity to be heard, should be reversed . The procedures address just those specific concerns argued by the defendants in *Moore* and comport with other decisions cited above

finding that due process was satisfied. The purpose of a hearing conducted pursuant to RCW 46.20.289 is to determine whether the right person has been identified and whether that person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court or has failed to comply with the terms of a notice of traffic infraction or citation. The procedures adopted by the legislature in RCW 46.20.245 are designed to ensure that an individual's license is not wrongfully revoked and that the risk of erroneous deprivation of a license under those procedures is minimal. Additional or substitute procedures would serve no benefit and certainly the burden placed on the government to provide additional or substitute procedures outweighs the minimal risk of erroneous deprivation of an individual's license under RCW 46.20.289 and RCW 46.20.245.

RESPECTFULLY SUBMITTED this 23rd day of July 2008.

LORI RIORDAN
Bellevue City Attorney


JILL M. THIELE
WSBA No. 22581
Assistant City Attorney
Attorneys for Petitioner

V. APPENDIX

APPENDIX A



ABFT

PO Box 9030, Olympia, WA 98507-9030

I04586407

March 13, 2006

File Copy

LEE, SHIN HA
1231 MARYLOU ST SE
LACEY WA 98503

DP

License #: LEE**SH277CW
Birthdate: 02-16-1973

On 04-27-2006 at 12:01 a.m. your driving privilege will be suspended. The Court has notified us that you failed to respond, appear, pay, or comply with the terms of the citation listed below:

<u>Citation Number</u>	<u>Violation Date</u>	<u>Reason for Citation</u>
I04586407	09-20-2005	SPEED (1 TO OVER 29 MPH)

What do I have to do to avoid suspension of my driving privilege?

- Contact this court to find out how to take care of this citation:
KING CO DIST CRT
516 3RD AVENUE RM E-327
SEATTLE, WA 98104
(206) 205-9200
- Provide proof that you have satisfied the court's requirements. Once the requirements are met, the court will send us notice. Because this may take several days, you may take your copy of the Notice of Adjudication form from the court to any driver licensing office to speed up the process.

What will happen if my driving privilege is suspended?

Make sure that we have received notice that this matter is settled before the date shown above. If we have not, it will be illegal for you to drive and you must surrender your license to any driver licensing office. You must pay a reissue fee and any other applicable licensing fees before a new license can be issued.

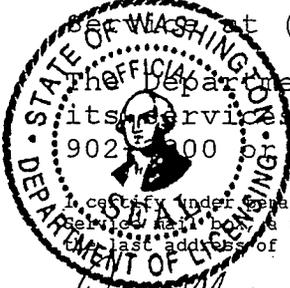
May I appeal this action?

Yes. To request an administrative review return the enclosed form or submit a written request to: Department of Licensing, Hearings & Interviews, PO Box 9031, Olympia, WA 98507-9031 or fax to (360) 664-8492. Requests must be postmarked within 15 days from the date of this notice. If you have questions, please call (360) 902-3878.

If you have other questions after contacting the court, call Customer Service at (360) 902-3900 or visit our website, at www.dol.wa.gov.

The Department of Licensing has a policy of providing equal access to its services. If you need special accommodation, please call (360) 902-3900 TTY (360) 664-0116.

I, certify under penalty of perjury under the laws of the state of Washington that I caused to be placed in a U.S. Postal Service mail box a true and accurate copy of this document to the person named herein at the address shown, which is the last address of record, postage prepaid, on March 13, 2006.



[Signature]
Agent for the Department of Licensing

Authority: RCW 46.20.289

APPENDIX B

STATE OF WASHINGTON
KING COUNTY DISTRICT COURT
EAST DIVISION - BELLEVUE

CITY OF BELLEVUE,)
Plaintiff,)

vs.)

BRITTANIA K. ALLEN)

NO. BC 142470

TAYLOR DALE-BENSON)

BC 143124

JESSIE CHI)

BC 143276

ROBERT CHRIST)

BC 142817

CESAR CRISOSTOMO)

BC 142412

DARRELL V. HESTER)

BC 138522

SHELLI L. LYTLE)

BC 143169

CHELSEA P. MULLIGAN)

BC 143446

RACQUEL B. RAMAC)

BC 143801

ANDRE STANSBERRY)

BC 143163

KARL VELEZ,)

BC 142822

Defendants.)

) FINDINGS, CONCLUSIONS
) AND ORDER ON DEFENDANTS'
) MOTION TO DISMISS FOR
) DUE PROCESS VIOLATION
)

I. INTRODUCTION

The defendants bring this Motion to Dismiss for Due Process Violation arising out of the suspension of their driver's licenses by the Washington Department of Licensing (DOL). The defendants argue RCW 46.20.245 does not provide for a meaningful opportunity to be heard in DOL suspension actions and consequently their procedural due process rights are violated. The defendants' motion is a facial challenge to the statute.

DWLS - DP/APP

The City argues the administrative review procedures provided in RCW 46.20.245 satisfy procedural due process requirements, and the provisions of the Administrative Procedures Act (APA) for adjudicative hearings do not apply to the license suspensions of these defendants.

The record consists of defendants' motion and memorandum, the City's response memorandum, and the defendants' reply memorandum. Additionally the parties have stipulated to the transcript of the hearing in *City of Bellevue v. Milana Attison*, BC 142932, which includes testimony of DOL witnesses and exhibits. The court also considered the oral argument of counsel for defendants, Joshua S. Schaer, and counsel for the City, Jeff Torrey.

II. FINDINGS

Each of the defendants has been charged by the City of Bellevue with the misdemeanor offense of driving while license suspended in the third degree (DWLS 3°). RCW 46.20.342. The suspensions arose out of the reported failure to respond to a notice of traffic infraction in some manner. In each of the cases a court had advised DOL of the ~~violation~~ advising DOL that on a date certain the driver had failed to respond to the letter the driver was advised a court had notified DOL of the driver's failure to respond, appear, pay, or comply with the terms of a traffic citation, the number of the citation, violation date and reason for the citation.

The suspension notice letter advised the driver to contact the applicable court to find out how to take care of the citation and provide proof to DOL the driver had satisfied

the court's requirements. The driver was also advised he/she may appeal the suspension action and informed how to request an administrative review, by returning the enclosed form or submitting a written request to DOL, postmarked within 15 days from the date of the notice of suspension. Based upon the information presented to the court, it does not appear any of the defendants in these cases requested an administrative review of the suspension action.

III. ISSUE

Do the provisions of RCW 46.20.245, allowing for administrative review of a DOL action to suspend a driver's license for failing to pay, appear or respond to a notice of traffic infraction, satisfy procedural due process requirements?

IV. ANALYSIS

The defendants conceded in oral argument the adjudicative procedures set forth in RCW 34.05.410-598 do not apply to DOL's review of driver's license suspensions in this context. Therefore, the only issue remaining is whether the procedures for review set forth in RCW 46.20.245 satisfy procedural due process requirements. The defendants argue RCW 46.20.245 fails to provide for a meaningful opportunity to be heard in DOL revocation or suspension actions. It should be noted the proposed action by DOL in all these cases was a suspension action for failure to pay, appear, or respond to a notice of traffic infraction.

Washington's traffic laws require DOL to suspend all driving privileges of a person when it receives a notice from a court under RCW 46.63.070(6), 46.63.110(6) or

46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a hearing, violated a promise to appear in court, or failed to comply with the terms of a traffic citation, except parking violations. RCW 46.20.289. Effective July 1, 2005, the suspension takes effect, pursuant to the provisions of RCW 46.20.245, and remains in effect until DOL receives a certificate from the court showing the case has been adjudicated. A reissuance fee must also be paid before a new license is issued to the person. RCW 46.20.311. If DOL receives a certificate of adjudication from the court prior to the effective date of the suspension, the suspension does not take effect. RCW 46.20.289. If after an administrative review DOL finds in the driver's favor, the suspension would also not take effect.

Prior to July 1, 2005 Washington's traffic laws did not require DOL to provide for any type of pre-suspension review or hearing for these types of license suspensions. The Washington Supreme Court's decision in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3rd 875 (2004) changed that practice. In *Redmond v. Moore* the Supreme Court held that the mandatory suspension of driver's licenses pursuant to RCW 46.20.289, without the opportunity for an administrative hearing, violated due process. The Court found the statutes did "not provide adequate procedural safeguards to ensure against the erroneous deprivation of a driver's interest in the continued use and possession of his or her driver's license." *Id* at 677.

As a result of the Court's decision in *Redmond v. Moore*, the Legislature amended RCW 46.20.289 and adopted RCW 46.20.245 to allow for an administrative review of the DOL's action to suspend a driver's license. Under RCW 46.20.245(1), DOL must give written notice of the suspension to the person by mail or personal service. The

notice must specify the date upon which the suspension will be effective, which shall not be less than forty-five days after the original notice is given. The driver must request the review in writing and postmark the request within fifteen days of the date of the DOL's notice of suspension. If the person fails to make the request within the required time period, the person is considered to have defaulted and loses his or her right to the administrative review, unless DOL finds good cause for the request after the fifteen-day period has expired.

RCW 46.20.245(2) defines the limited nature and extent of the administrative review process and the opportunity for judicial review.

- (a) An administrative review under this subsection shall consist solely of an internal review of documents and records submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.
- (b) The only issues to be addressed in the administrative review are:
 - (i) Whether the records relied on by the department identify the correct person; and
 - (ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.
- (c) For the purposes of this section, the notice received from a court or other reporting agency or entity, regardless of form or format, is *prima facie* evidence that the information from the court or other reporting agency or entity regarding the person is accurate. A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the withholding of the driving

privilege.

- (d) The action subject to the notification requirements of subsection (1) of this section shall be stayed during the administrative review process.
- (e) Judicial review of a department order affirming the action subject to the notification requirements of subsection (1) of this section after an administrative review shall be available in the same manner as provided in RCW 46.20.308(9).

The law is well-settled that driver's licenses may not be suspended or revoked without procedural due process required by the Fourteenth Amendment. *Redmond v. Moore* at 619; *Dixon v. Love*, U.S. 103, 112, 97 S.Ct. 1723, 52 L.Ed. 2d 172 (1977); *Mullinax v. Delaware*, 131 U.S. 245, 222, 80 S.Ct. 897, 47 L.Ed. 2d 18 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed. 2d 62 (1965), *City of Remond v. Arroyo-Murillo*, 149 Wn.2d 607, 612, 70 P.3d 947 (2003).

In *Redmond v. Moore* the Court discussed several other states' procedures for providing review of license suspensions, but the Court did not specify the type or extent of administrative hearing drivers should receive for these types of license suspensions. The Court noted that while the procedures may vary according to the interest at stake, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id* at 670.

The Supreme Court recently provided some guidance on the type of pre-suspension review for a driver's license suspension that passes constitutional muster. In *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 143 P.3d 571 (2006), the Court upheld the provisions of RCW 74.20A.320 involving an administrative hearing of a driver's license suspension for failure to pay child support. The Court found the appellant's reliance on

Redmond v. Moore was misplaced because the statute being challenged did provide the person an opportunity to appeal, the opportunity for an administrative hearing to challenge the suspension, and a stay of proceeding pending the outcome of the administrative hearing and for an additional six months. Similar to RCW 46.20.245, the administrative hearing in *Amunrud* limited the scope of the issues that could be reviewed during the administrative hearing process. The Court found Mr. Amunrud was given an opportunity to be heard at a meaningful time and in a meaningful manner and, therefore, his right to procedural due process was not violated. *Id* at 218.

In the present case RCW 46.20.245 provides similar protections. There is now an opportunity to appeal the notice of suspension, the opportunity for an administrative review, the opportunity for an interview before DOL¹, a stay of proceeding pending the administrative review decision, and the opportunity for judicial review. Although the scope of review is limited to the two issues set forth in the statute, that type of limitation does not violate due process. As noted in *Amunrud*, and by the dissent in *Redmond v. Moore*, drivers have other avenues to address mistakes or other issues associated with the underlying reason for the suspension of a driver's license. The DOL has no authority to change a court's decision. The driver must present those issues or mistakes to the appropriate court.

The administrative review process provided by RCW 46.20.245 certainly reduces the likelihood of an erroneous deprivation of a person's driver's license due to

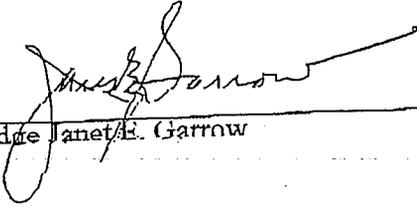
¹ In addition to the written request for administrative review, either by form or other writing, RCW 46.20.245 provides the opportunity for a person to request an interview before the department. Based upon the record before this Court it does not appear DOL has taken steps, either via rule-making or procedures, to advise drivers how to obtain that interview before the department. Because this is a facial challenge to the statute, this court does not have to reach the question of whether the statute as applied is unconstitutional. Furthermore, there is no evidence any of these defendants availed themselves of the administrative review process provided by the statute.

DOL error. If there was an error made by a court, the driver can seek an administrative review from DOL, advise DOL what the problem is, automatically obtain a stay of the DOL suspension action pending review, and take the necessary steps to address the issue with the appropriate court. For these reasons the court finds the statutory provisions of RCW 46.20.245 provide drivers the opportunity to be heard in a meaningful time and in a meaningful manner.

V. CONCLUSION

The defendants challenge the constitutionality of RCW 46.20.245 and therefore bear the burden of establishing beyond a reasonable doubt the statute is unconstitutional. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 631, 71 P.3d 644 (2003). Defendants' facial challenge of the statute must be denied if there are any circumstances where the statute can be constitutionally applied. *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 141 Wn.2d 245, 282, n.14.4 P.3d 808 (2000). For the reasons set forth herein, the defendants have failed to meet their burden. Therefore, the defendants' Motion to Dismiss for Due Process Violation is DENIED.

DATED this 31st day of December, 2006.



Judge Janet A. Garrow

APPENDIX C

[Handwritten signature]
I will promptly mail copies of this
order to all other counsel/parties

COPIES MAILED TO
PARTIES/COUNSEL ON MAR 31 2008

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

SHIN H. LEE, ET. AL.,)	
)	NO. 07-1-03641-1SEA
Appellant,)	
)	ORDER ON RALJ MOTION
V.)	(PROPOSED)
)	
CITY OF BELLEVUE,)	
Respondent.)	[CLERK'S ACTION REQUIRED]
_____)	

THIS MATTER having come on for oral argument on March 25, 2008 before the undersigned Judge of the above entitled court and after reviewing the record on appeal and considering the written and oral argument of the parties, the court holds the following:

RCW 46.20.245 fails to comply with due process and is therefore unconstitutional. This statute fails to provide for a meaningful due process administrative review; providing only an "interview" in writing. There is no opportunity for cross examination or any other due process protections as a matter of right. The decision to conduct a hearing and what form that hearing will take rests solely with the Department of Licensing. No witnesses can be subpoenaed and no live testimony can be taken. The procedures, therefore, as set forth in RCW 46.20.245 fail to comply with both substantive and procedural

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due process and fail to address the due process concerns raised in *Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004).

IT IS HEREBY ORDERED that the above cause is reversed and remanded back to the King County District Court, Bellevue Division for further proceedings in accordance with the above decision.

3/31/08
Date



Judge

Attorney for Appellant WSBA # _____

Attorney for Respondent WSBA #91037